

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

|                      |   |                      |
|----------------------|---|----------------------|
| STATE OF WASHINGTON, | ) |                      |
|                      | ) | No. 62063-1-I        |
| Respondent,          | ) |                      |
|                      | ) | DIVISION ONE         |
| v.                   | ) |                      |
|                      | ) | UNPUBLISHED OPINION  |
| ROBERT BURRELL,      | ) |                      |
|                      | ) |                      |
| Appellant.           | ) | FILED: June 15, 2009 |

Grosse, J. — A plea agreement is a contract between a defendant and the State and we review the language of the agreement in order to give effect to the parties' intent. Here, the defendant had pleaded guilty to two previous crimes. That plea agreement specified that the defendant would receive credit in the current case if he were still in custody on the earlier convictions. Because the defendant had already completed his jail time on those convictions by the time he was arraigned on the current crime, there was nothing to credit. The State's recommended sentence was consistent with the plea agreement. The trial court is affirmed.

### FACTS

On December 12, 2005, Robert Burrell was arraigned in Snohomish County Superior Court on one count of second degree possession of stolen property for possessing a stolen Volkswagen Jetta on November 16. While on release from that offense, on February 16, 2006, Burrell was observed driving a stolen Toyota Celica. The police gave chase and Burrell eluded police officers, driving erratically through multiple red lights, and at one point, on the sidewalk. The Toyota Celica crashed into

several vehicles and Burrell fled from the car. Police officers eventually arrested him. Burrell was not immediately charged in this incident. Indeed, he was not charged until June 7, 2007.

On May 4, 2006, Burrell was arraigned on a new, separate second degree possession of stolen property charge involving an April 25, 2006 incident in which Burrell was again observed in a recently stolen Toyota pickup truck. Burrell again attempted to elude the police. He was unsuccessful.

On June 8, 2006, Burrell pleaded guilty to both the December 12, 2005 and April 25, 2006 incidents. He executed a guilty plea statement in which the State agreed to the following:

Will recommend concurrent time in the uncharged case if it is filed for PSP [(possession of stolen property)] 1st or PSP 2nd / Attempting to Elude/ Assault 4th degree charges which allegedly arose out of an incident on 2/16/06 with the Snohomish Police Department [(PD)]. The concurrent recommendation would apply only if he is incarcerated on this matter and credit shall be given from the arraignment date on the new Snohomish PD charges. As of the plea date, the Prosecutor's Office DOES NOT have any files to charge for the alleged 2/16/06 offense date.

On July 19, 2006, Burrell was sentenced to four months to be served concurrently for the December 2005 and April 2006 incidents. Burrell was released from jail around Thanksgiving 2006.

On June 7, 2007, Burrell was charged with the February 16, 2006 incident. On March 26, 2008, the court accepted Burrell's statement of defendant on plea of guilty. The plea agreement did not contain any agreement or refer to the prior cases' plea agreements. The agreement simply stated that the State "makes no agreement with regard to a sentencing recommendation and may make a sentencing recommendation

for the full penalty.”

At sentencing, the defense argued that Burrell was entitled to credit for his time served on the prior two incidents as if the arraignment in the matter now before the court had occurred prior to or at the same time as the sentencing on the prior offenses. The defense contended that the delay in filing the present case was totally within the control of the State. The State disputed any bad faith in bringing the matter and noted the matter was originally investigated as a vehicular assault. The State argued against Burrell’s receiving credit for time served and further that it had no obligation to so recommend. The trial court found no fault in the State’s bringing the matter at this time and sentenced Burrell to 22 months’ confinement with no time for credit served. Burrell appeals.

#### ANALYSIS

A plea agreement is a contract between a defendant and the State.<sup>1</sup> As a contract, the court’s objective is to ascertain and give effect to the intent of the parties, and to do so, we look at the language of the plea agreement.<sup>2</sup> In determining whether there was a breach, this court considers whether the State’s words and conduct, objectively viewed, contradict a promise.<sup>3</sup> “The State fulfills its obligations if it acts in good faith and does not contravene the defendant’s reasonable expectations that arise from the agreement.”<sup>4</sup>

---

<sup>1</sup> In re Pers. Restraint of Lord, 152 Wn.2d 182, 188, 94 P.3d 952 (2004) (citing State v. Turley, 149 Wn.2d 395, 400, 69 P.3d 338 (2003)).

<sup>2</sup> State v. Olivia, 117 Wn. App. 773, 779, 73 P.3d 1016 (2003).

<sup>3</sup> State v. Lake, 107 Wn. App. 227, 233, 27 P.3d 232 (2001).

<sup>4</sup> State v. McInally, 125 Wn. App. 854, 861-62, 106 P.3d 794 (2005) (citing State v. McRae, 96 Wn. App. 298, 305, 979 P.2d 911 (1999)).

Applying those axioms to the present case, the conclusion is inescapable that the State did not violate the plea agreement. In the plea agreement entered sub judice, the State clearly states that it is making no agreement regarding sentencing in this case. Paragraph 5 of the plea agreement states:

The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, and the State makes no agreement with regard to a sentencing recommendation and may make a sentencing recommendation for the full penalty allowed by law.

This is the agreement that Burrell signed in the instant matter. There is no promise of credit. Furthermore, the guilty plea agreement in the prior cases recommended credit only for time served at the time of arraignment. "The concurrent recommendation would apply only if he is incarcerated on this matter [November 2005 and April 2006 incidents] and credit shall be given from the arraignment date on the new Snohomish PD charges [February 2006 incident]." Since Burrell was not incarcerated on this charge, the February 16, 2006 incident, at the time of the arraignment, he is not entitled to credit for any time served.

Burrell argues that he should be given credit because the file was given to the prosecutor in September 2006, while he was still serving time for the previous crimes. But the prosecutor's filing of charges was not untimely. At sentencing, the prosecutor noted that the file was thick and that the State was considering charging the defendant with vehicular assault. Moreover, there is nothing in the record to show that the prosecutor delayed bringing any charges against the defendant.

The judgment and sentence is affirmed.

Grosse, J

WE CONCUR:

Leach, J.

Schindler, C